

COMES NOW Defendant JASCOTT ENTERPRISES, LLC (hereinafter referred to as “JASCOTT” and/or “Defendant”) and hereby files this “Defendant Jascott Enterprises, LLC’s First Amended Answer To Plaintiff’s Original Complaint” (“Amended Answer”), in response to “Plaintiff’s Original Complaint”, as filed by Brandon Callier (“CALLIER” and/or “Plaintiff”), and would respectfully show the Court as follows:

1. Answering Paragraph 1 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.
2. Answering Paragraph 2 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.
3. Answering Paragraph 3 of the Complaint, JASCOTT admits the allegations contained therein.
4. Answering Paragraph 4 of the Complaint, JASCOTT neither admits nor denies

the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

I. JURISDICTION AND VENUE.

5. **Jurisdiction.** Answering Paragraph 5 of the Complaint, JASCOTT denies that it called Plaintiff as alleged, and lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

6. **Personal Jurisdiction.** Answering Paragraph 6 of the Complaint, JASCOTT denies that it called Plaintiff as alleged, and lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

5. **Venue.** Answering Paragraph 5 of the Complaint, JASCOTT denies that it called Plaintiff as alleged, and lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

7. Answering Paragraph 7 of the Complaint, JASCOTT denies that it called Plaintiff as alleged, and lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

II. THE TELEPHONE CONSUMER PROTECTION ACT.

9. Answering Paragraph 9 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

10. Answering Paragraph 10 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

11. Answering Paragraph 11 of the Complaint, JASCOTT neither admits nor denies

the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

12. Answering Paragraph 12 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

13. Answering Paragraph 13 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

14. Answering Paragraph 14 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

15. Answering Paragraph 15 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

16. Answering Paragraph 16 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

17. Answering Paragraph 17 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

18. Answering Paragraph 18 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

19. Answering Paragraph 19 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

20. Answering Paragraph 20 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

21. Answering Paragraph 21 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

22. Answering Paragraph 22 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

23. Answering Paragraph 23 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

24. Answering Paragraph 24 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

25. Answering Paragraph 25 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

III. FACTUAL ALLEGATIONS.

26. Answering Paragraph 26 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

27. Answering Paragraph 27 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

28. Answering Paragraph 28 of the Complaint, JASCOTT neither admits nor denies the allegations contained therein, as no response is required. However, to the extent a response is required, JASCOTT denies the allegations in said paragraph.

29. Answering Paragraph 29 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

30. Answering Paragraph 30 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

31. Answering Paragraph 31 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

32. Answering Paragraph 32 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

33. Answering Paragraph 33 of the Complaint, JASCOTT admits that Plaintiff never filled out an application with JASCOTT, and never established a business relationship with JASCOTT, but lacks sufficient information to either admit or deny whether Plaintiff had never heard of JASCOTT.

34. Answering Paragraph 34 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

35. Answering Paragraph 35 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

36. Answering Paragraph 36 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

37. Answering Paragraph 37 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

38. Answering Paragraph 38 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

39. Answering Paragraph 39 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

40. Answering Paragraph 40 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

41. Answering Paragraph 41 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

42. Answering Paragraph 42 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

43. Answering Paragraph 43 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

44. Answering Paragraph 44 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

45. Answering Paragraph 45 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

46. Answering Paragraph 46 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

47. Answering Paragraph 47 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

48. Answering Paragraph 48 of the Complaint, JASCOTT denies each and every

allegation with respect to JASCOTT.

49. Answering Paragraph 49 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

50. Answering Paragraph 50 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

51. Answering Paragraph 51 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

52. Answering Paragraph 52 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

53. Answering Paragraph 53 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

54. Answering Paragraph 54 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

55. Answering Paragraph 55 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

56. Answering Paragraph 56 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

57. Answering Paragraph 57 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

58. Answering Paragraph 58 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

59. Answering Paragraph 59 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

60. Answering Paragraph 60 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

61. Answering Paragraph 61 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

62. Answering Paragraph 62 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

63. Answering Paragraph 63 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

64. Answering Paragraph 64 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

65. Answering Paragraph 65 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

66. Answering Paragraph 66 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

67. Answering Paragraph 67 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

68. Answering Paragraph 68 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

69. Answering Paragraph 69 of the Complaint, JASCOTT denies that it called Plaintiff, and lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

70. Answering Paragraph 70 of the Complaint, JASCOTT denies that it called Plaintiff, and lacks sufficient information to either admit or deny the remainder of the allegations

contained therein.

**VICARIOUS LIABILITY OF DEFENDANT WESTERN FOR CALLS PLACED
BY DEFENDANT JASCOTT**

71. Answering Paragraph 71 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

72. Answering Paragraph 72 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

73. Answering Paragraph 73 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

74. Answering Paragraph 74 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

75. Answering Paragraph 75 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

76. Answering Paragraph 76 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

77. Answering Paragraph 77 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

78. Answering Paragraph 78 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

79. Answering Paragraph 79 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

80. Answering Paragraph 80 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

81. Answering Paragraph 81 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

82. Answering Paragraph 82 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

**VICARIOUS LIABILITY OF DEFENDANT WESTERN FOR CALLS PLACED
BY DEFENDANT JASCOTT**

83. Answering Paragraph 83 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

84. Answering Paragraph 84 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

85. Answering Paragraph 85 of the Complaint, JASCOTT denies that it called Plaintiff, and lacks sufficient information to either admit or deny the remainder of the allegations contained therein.

**INJURY, HARM, DAMAGES, AND ACTUAL DAMAGES
AS A RESULT OF THE CALLS**

86. Answering Paragraph 86 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

87. Answering Paragraph 87 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

88. Answering Paragraph 88 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

89. Answering Paragraph 89 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

Plaintiff's Cell Phone is a Residential Number

90. Answering Paragraph 90 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

Violations of the Texas Business and Commerce Code 305.053

91. Answering Paragraph 91 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

92. Answering Paragraph 92 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

Violations of the Texas Business and Commerce Code § 302.101

93. Answering Paragraph 93 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

94. Answering Paragraph 94 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

95. Answering Paragraph 95 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

96. Answering Paragraph 96 of the Complaint, JASCOTT lacks sufficient information to either admit or deny the allegations contained therein.

97. Answering Paragraph 97 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

IV. CAUSES OF ACTION.

COUNT ONE:

(Violation of the TCPA "Sales Call IDNC" Prohibition, 47 U.S.C. 227(c), and 47 C.F.R. § 64.1200(C))

98. Answering Paragraph 98 of the Complaint, JASCOTT incorporates Paragraphs 1-

97 of its Answer.

99. Answering Paragraph 99 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

100. Answering Paragraph 100 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

101. Answering Paragraph 101 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

102. Answering Paragraph 102 of the Complaint, JASCOTT denies each and every allegation.

**COUNT TWO:
Telemarketing Without Mandated Safeguards, 47 C.F.R. § 64.1200(d)
(Against All Defendants)**

103. Answering Paragraph 103 of the Complaint, JASCOTT incorporates Paragraphs 1-102 of its Answer.

104. Answering Paragraph 104 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

110. Answering Paragraph 110 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

111. Answering Paragraph 111 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

**COUNT THREE:
Violations of The Texas Business and Commerce Code 305.053
(Against All Defendants)**

112. Answering Paragraph 112 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

113. Answering Paragraph 113 of the Complaint, JASCOTT incorporates Paragraphs 1-112 of its Answer.

114. Answering Paragraph 114 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

116. Answering Paragraph 116 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

**COUNT FOUR:
(Violations of The Texas Business and Commerce Code 302.101)
(Against All Defendants)**

117. Answering Paragraph 117 of the Complaint, JASCOTT incorporates Paragraphs 1-116 of its Answer.

118. Answering Paragraph 118 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

119. Answering Paragraph 119 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

120. Answering Paragraph 120 of the Complaint, JASCOTT denies each and every allegation with respect to JASCOTT.

V. AFFIRMATIVE DEFENSES.

121. **First Affirmative Defense (Failure to State Cause of Action).** As a separate, affirmative defense, JASCOTT contends that Plaintiff's Complaint, and each cause of action contained therein, fails to state facts sufficient to constitute a valid cause of action against JASCOTT.

122. **Second Affirmative Defense (Statute of Limitations).** As a separate, affirmative defense, JASCOTT contends that Plaintiff's Complaint, and each cause of action

contained therein, or portions thereof, is barred by the applicable statutes of limitations.

123. **Third Affirmative Defense (Equitable Defenses).** As a separate, affirmative defense, JASCOTT contends that Plaintiff's Complaint, and each cause of action alleged therein against JASCOTT, are barred by doctrines of estoppel, waiver, unclean hands, and other equitable doctrines.

124. **Fourth Affirmative Defense (No Intentional or Reckless Conduct).** As a separate, affirmative defense, JASCOTT contends that it did not engage in any conduct that was outrageous, intentional and malicious or done with reckless disregard with respect to Plaintiff. JASCOTT also alleges that it never engaged in any knowing, willful or fraudulent conduct with respect to Plaintiff.

125. **Fifth Affirmative Defense (Mitigation of Damages).** As a separate, affirmative defense, JASCOTT contends that Plaintiff is not entitled to recover any damages, and any recovery awarded should be reduced by the amount of damages which reasonably could have been avoided, because Plaintiff failed to take reasonable steps to mitigate his damages with respect to the matters alleged in the Complaint.

126. **Sixth Affirmative Defense (Prior Express or Implied Consent).** As a separate, affirmative defense, JASCOTT contends that there was consent to call the phone number at issue, either via prior express written consent or invitation.

127. **Seventh Affirmative Defense (Substantial Compliance).** As a separate, affirmative defense, JASCOTT contends it substantially complied with the requirements of the statutes at issue.

128. **Eighth Affirmative Defense (No Actual Damages).** As a separate, affirmative defense, JASCOTT contends that Plaintiff suffered no actual damages.

129. **Ninth Affirmative Defense (Lack of Subject Matter-Jurisdiction).** As a separate, affirmative defense, JASCOTT contends Plaintiff's Complaint lacks subject-matter jurisdiction.

130. **Tenth Affirmative Defense (No Double Recovery).** As a separate, affirmative defense, JASCOTT contends that Plaintiff cannot double recover for the same harm.

131. **Eleventh Affirmative Defense (Reasonableness and Good Faith).** As a separate, affirmative defense, JASCOTT contends that JASCOTT and its agents, if any, acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by them at the time they so acted, and acted lawfully and within their legal rights, with a good faith belief in the exercise of those rights, and in the furtherance of legitimate business purpose. Further, JASCOTT acted in good faith in the honest belief that the acts, conducted and communications, if any, of JASCOTT were justified under the circumstances based on information reasonably available to JASCOTT. Accordingly, Plaintiff is barred from any recovery in this action.

132. **Twelfth Affirmative Defense (Safe Harbor).** As a separate, affirmative defense, JASCOTT contends it maintained written procedures to comply with the TCPA DNC rules and trained its personnel regarding same.

VI. RESERVATION OF RIGHTS.

133. Defendant JASCOTT reserves the right to assert such other defenses to which it may be entitled, pursuant to its right to amend or supplement this Amended Answer per the Federal Rules of Civil Procedure.

134. Defendant reserves its rights to seek recovery of the reasonable and necessary attorney's fees and costs incurred herein, pursuant to the Federal Rules of Civil Procedure and

the applicable local rules.

VII. PRAYER FOR RELIEF.

WHEREFORE, ALL PREMISES CONSIDERED, and for the foregoing stated reasons, Defendant JASCOTT herein prays that the Court (a) enter judgment that Plaintiff take nothing, (b) dismiss the Plaintiff's Complaint with prejudice, (c) award Defendant JASCOTT its reasonable attorney's fees and costs incurred herein, and (d) grant Defendant JASCOTT such other and further relief to which said Defendant may show itself justly entitled.

January 23, 2023

Respectfully submitted,

THE NEVAREZ LAW FIRM, PC

A Professional Corporation

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/s/ Michael R. Nevarez

By: **MICHAEL R. NEVAREZ**

State of Texas Bar No. 14933400

Attorney for JASCOTT ENTERPRISES, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2023, a true and correct copy of the foregoing **DEFENDANT JASCOTT ENTERPRISES, LLC'S FIRST AMENDED ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT** was served either by electronic means as listed on the Court's CM/ECF filing and noticing system, and/or by regular first-class mail, postage prepaid, to all the following parties in interest:

PLAINTIFF:

Brandon Callier
6336 Franklin Trail
El Paso, TX 79912
Email: Callier74@gmail.com

DEFENDANT PAC WESTERN FINANCIAL LLC:

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/s/ Michael R. Nevarez
MICHAEL R. NEVAREZ